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Attorneys for Defendant/Counter-Plaintiff,  
 KEATING DENTAL ARTS, INC.

IN THE UNITED STATES DISTRICT COURT  
 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 SOUTHERN DIVISION

JAMES R. GLIDEWELL DENTAL  
 CERAMICS, INC. dba GLIDEWELL  
 LABORATORIES,

Plaintiff,

v.

KEATING DENTAL ARTS, INC.

Defendant.

AND RELATED COUNTERCLAIMS.

Civil Action No.  
 SACV11-01309-DOC(ANx)

**DECLARATION OF DR.  
 TERRY L. MYERS IN  
 SUPPORT OF KEATING  
 DENTAL ARTS, INC.'S  
 MOTIONS FOR SUMMARY  
 JUDGMENT**

Honorable David O. Carter

1 I, Dr. Terry L. Myers, hereby declare as follows:

2 I am a practicing dentist who has purchased dental restorations from  
3 Keating Dental Arts, Inc. ("Keating"). My dental office is located at 109 Apple  
4 Valley Parkway, Belton, MO 64012. I have personal knowledge of the matters  
5 set forth herein. If called upon to testify, I could and would testify as follows:

6 1. I am licensed to practice dentistry in the state of Missouri. I  
7 received an undergraduate degree from Rockhurst University in 1982. I  
8 received a Doctor of Dental Surgery degree from the University of Missouri at  
9 Kansas City ("UMKC") in 1987. In 1988, I completed a residency in advanced  
10 general dentistry at UMKC. In 1992, I became a Fellow in the Academy of  
11 General Dentistry. From 1988 to 2001, I worked as an assistant professor at  
12 UMKC in addition to working in my dental practice. I have been practicing as a  
13 licensed dentist for 26 years. During that time, it has been a regular part of my  
14 practice to treat patients in need of dental restorations.

15 2. To address my patients in need of dental restorations, it has been  
16 my practice to purchase crowns and bridges from dental laboratories that  
17 manufacture the restorations in response to my specifications. In this regard, I  
18 provide the dental laboratories with a prescription form that identifies the  
19 patient, the tooth (or teeth), and the specific dental restoration product that I  
20 would like manufactured for the patient. The state of Missouri requires dentists  
21 to use a state issued standard prescription for these purposes. Attached as  
22 **Exhibit A** is a true and correct copy of one of these blank forms issued by the  
23 State of Missouri.

24 3. Since my dental practice began in 1988, I have ordered dental  
25 restorations from a number of different dental laboratories. I have been ordering  
26 dental restorations from Keating since around 2002. I am aware of Glidewell  
27 Laboratories but have only occasionally ordered a dental restoration from them.

28 4. I have ordered many different types of dental restorations from

1 Keating, including porcelain-fused-to-metal crowns, gold crowns, and crowns  
2 containing zirconia.

3 5. The first time I ordered a crown containing zirconia from Keating  
4 was in May 2007 when I ordered a “KDZ” crown. In 2007, Keating’s “KDZ”  
5 crown had a zirconia substructure with a porcelain overlay and I recognized the  
6 “Z” in the name to identify a product made with Zirconia.

7 6. The first time I ordered a full contour zirconia crown from Keating  
8 was in July 2011 when I ordered what Keating calls a KDZ Bruxer crown. I  
9 learned of Keating’s KDZ Bruxer product from speaking with Keating  
10 representatives at their booths at tradeshow.

11 7. More recently, in November 2011, I ordered a KDZ Bruxer crown  
12 from Keating for tooth #18 for one of my patients. Attached as **Exhibit B** is a  
13 true and correct copy of the Dental Laboratory Work Authorization form that I  
14 submitted to Keating for this order.

15 8. In the order form attached as Exhibit B, I specified the product that  
16 I was ordering by having my assistant, under my direction, write “Bruxzir” in  
17 the space after “Type of restoration” and then writing “Please fabricate #18  
18 Bruxzir crown” in the “Instructions” section of the form. I used the term  
19 “bruxzir” on the prescription form because to me that term meant a full contour  
20 zirconia crown for bruxers. I knew I was ordering the crown from Keating and I  
21 wanted to receive a crown made by Keating.

22 9. When I asked my assistant to write “Bruxzir” on the prescription  
23 form, I did not intend to order a crown made by Glidewell Laboratories. Nor  
24 did I intend to order a crown made from material provided by Glidewell  
25 Laboratories. When I ordered the KDZ Bruxer crown, I did not think there was  
26 any affiliation between Keating and Glidewell Laboratories.

27 10. In the course of my dental practice, I see many advertisements for  
28 dental products. Within these advertisements, I have seen many different dental

laboratories advertise a “bruxzir” crown. From these advertisements, I understand the term “bruxzir” crown means a full contour zirconia crown and does not identify a particular company or a particular company’s product.

11. When I saw the term “bruxzir” used to refer to an all zirconia crown, I recognized “zir” in the term to refer to zirconia and “brux” to identify a patient who bruxes or has bruxism.

12. Soon after sending the prescription form attached as Exhibit B to Keating, an employee of Keating contacted my office to clarify my order and spoke with my assistant. Specifically, the Keating employee asked to confirm that I wanted to order Keating’s KDZ Bruxer product. The Keating employee explained that the term “BruxZir” is a brand name of another dental laboratory and offered to return the order to me if I wanted to order from another dental laboratory. I told my assistant to confirm that I wanted to order Keating’s full contour zirconia crown.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed November 13, 2012, in Belton, Missouri.

  
Dr. Terry L. Myers

# EXHIBIT A

1418

## Missouri Dental Board Dental Laboratory Work Authorization

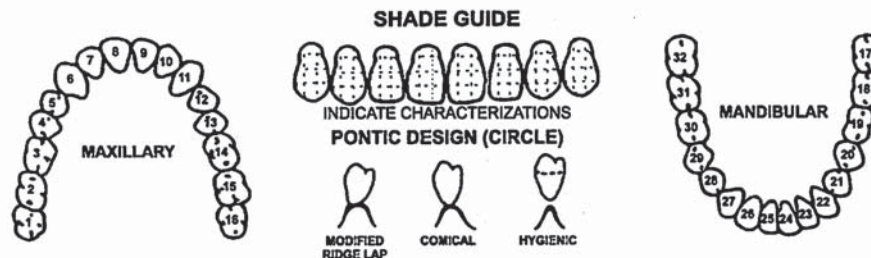
Patient's Name \_\_\_\_\_ Date \_\_\_\_\_

Dentist's Name \_\_\_\_\_ Laboratory Name \_\_\_\_\_

Dentist's Address \_\_\_\_\_ Laboratory Address \_\_\_\_\_

City, State, Zip \_\_\_\_\_ City, State, Zip \_\_\_\_\_

Material \_\_\_\_\_ Type of Restoration \_\_\_\_\_



Prosthetic identification as follows: Name \_\_\_\_\_ SSN \_\_\_\_\_ Other \_\_\_\_\_

Teeth, Facings or Pontics				
Location	Material	Shade	Guide	Mold
Max Ant				
Max Post				
Man Ant				
Man Post				

Return Date \_\_\_\_\_

Try In Date \_\_\_\_\_

Finish Date \_\_\_\_\_

### INSTRUCTIONS

Case has been disinfected: Yes ☐ No ☐

DOCTOR'S SIGNATURE \_\_\_\_\_ DDS/DMD LICENSE# \_\_\_\_\_ DATE \_\_\_\_\_

***A copy of this form must be retained in the dental laboratory office and the dentists' office for a period of 2 years.***

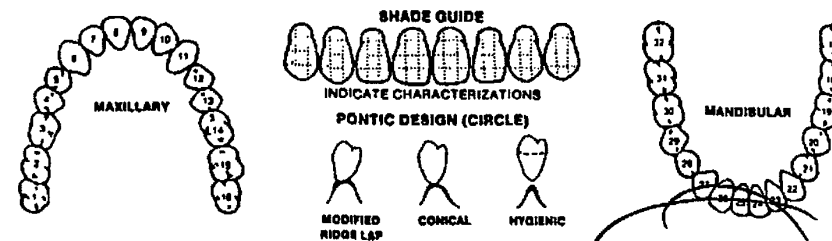
# EXHIBIT B

CONFIDENTIAL ATTORNEY'S EYES ONLY

KDA-001965

# **Dental Board Dental Laboratory Work Authorization**

Patient's name REDACTED Date 11-1-11 148312  
 Dentist's name Terry Myers Laboratory name Keating  
 Dentist's address \_\_\_\_\_ Laboratory address \_\_\_\_\_  
 City, state, zip Bellton MD City, state, zip \_\_\_\_\_  
 Material \_\_\_\_\_ Type of restoration Bruxzir



Prosthetic Identification as follows: Name \_\_\_\_\_ SSN \_\_\_\_\_ Other \_\_\_\_\_  
 Return Date 11-14-11  
 Try In Date \_\_\_\_\_  
 Finish Date \_\_\_\_\_

Teeth, Facings or Pontics				
Location	Material	Shade	Guide	Mold
Max Ant				
Max Post				
Man Ant				
Man Post				

## **INSTRUCTIONS**

Case has been disinfected - yes ☒ no ☐

*Imp JT*  
 Please fabricate #18  
 Bruxzir crown - Shade 'A'

DOCTOR'S SIGNATURE J. Myers DDS/ODM LICENSE # 14881 DATE 11-1-11

**A copy of this form must be retained in the dental laboratory office and the dentist's office for a period of 2 years.**

ORIGINAL